

ENDORSED
FILED
ALAMEDA COUNTY

FEB 18 2014

CLERK OF THE SUPERIOR COURT
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16 ANTHONY E. HELD, PH.D., P.E.;
17 PETER ENGLANDER;
18 WHITNEY R. LEEMAN, PH.D.; and
19 JOHN MOORE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

18 ANTHONY E. HELD, PH.D., P.E.; PETER
19 ENGLANDER; WHITNEY R. LEEMAN,
20 PH.D.; and JOHN MOORE,

21 Plaintiffs,

22 v.

23 READY AMERICA, INC.; ABLE PLANET,
24 INCORPORATED; E.S.I. CASES &
25 ACCESSORIES, INC.; GROCERY OUTLET
26 INC.; QUICK FITTING, INC.; TAP
27 PLASTICS, INC., A CALIFORNIA
28 CORPORATION; and DOES 1-150, inclusive,

Defendants.

Case No. RG16803507

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiffs ANTHONY E.
3 HELD, PH.D., P.E., PETER ENGLANDER, WHITNEY R. LEEMAN, PH.D., and JOHN
4 MOORE, in the public interest of the citizens of the State of California to enforce the People’s
5 right to be informed about exposures to toxic chemicals found in consumer products sold in
6 California.

7 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
8 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
9 doing business shall knowingly and intentionally expose any individual to a chemical known to
10 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
11 warning to such individual” Health & Safety Code § 25249.6.

12 3. Detectable levels of diisononyl phthalate (“DINP”) are commonly found in and
13 on components of consumer products that certain defendants import, manufacture, distribute,
14 ship, sell and/or offer for sale to consumers throughout the State of California.

15 4. On December 20, 2013, California listed DINP pursuant to Proposition 65 as a
16 chemical that is known to cause cancer. DINP became subject to the “clear and reasonable
17 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
18 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

19 5. Detectable levels of di(2-ethylhexyl)phthalate (“DEHP”) are commonly found in
20 and on the consumer products that certain defendants import, manufacture, distribute, ship, sell
21 and/or offer for sale to consumers throughout the State of California.

22 6. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
23 chemical known to cause birth defects and other reproductive harm. DEHP became subject to
24 the “clear and reasonable warning” requirements of the act one year later on October 24, 2004.
25 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 7. DINP and DEHP are referred to hereinafter collectively as the “LISTED
27 CHEMICALS.”

1 8. By this Complaint, Plaintiff ANTHONY E. HELD, PH.D., P.E. (“HELD”) seeks
2 to remedy the continuing failure of defendants READY AMERICA, INC. (“READY
3 AMERICA”) and QUICK FITTING, INC. (“QUICK FITTING”) to warn individuals not
4 covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who
5 purchase, use or handle READY AMERICA’s and QUICK FITTING’s products, about the
6 risks of exposure to toxic chemicals, present in and on consumer products that are
7 manufactured, distributed, and offered for sale or use throughout the State of California.

8 9. READY AMERICA manufactures, distributes, imports, sells, and offers for sale
9 without warning in California, vinyl/PVC gloves containing DINP, including, but not limited to,
10 the vinyl gloves sold in connection with the *Ready America First Aid Outdoor Kit , VG-1. UPC*
11 *#7 53962 74002 5* (“GLOVES”).

12 10. QUICK FITTING manufactures, distributes, imports, sells, and offers for sale
13 without warning in California, vinyl/PVC ball valve handles containing DEHP, including, but
14 not limited to, the handle component of the *ProBite ½” x ½” Full Port Ball Valve, PB912*
15 (“VALVE HANDLES”).

16 11. By this Complaint, Plaintiff PETER ENGLANDER (“ENGLANDER”) seeks to
17 remedy the continuing failure of defendants E.S.I. CASES & ACCESSORIES, INC. (“E.S.I.”)
18 and GROCERY OUTLET INC. (“GROCERY OUTLET”) to warn individuals not covered by
19 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
20 use or handle E.S.I.’s and GROCERY OUTLET’s products, about the risks of exposure to toxic
21 chemicals, present in and on consumer products manufactured, distributed, and offered for sale
22 or use throughout the State of California.

23 12. E.S.I. and GROCERY OUTLET manufacture, distribute, import, sell, and offer
24 for sale without warning in California, headphones with vinyl/PVC cords containing DEHP,
25 including, but not limited to, the *Duracell Folding Stereo Headphones with Microphone, Model*
26 *GDU9539, UPC #6 80988 95339 2* (“HEADPHONE CORDS”).
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1 13. By this Complaint, Plaintiff WHITNEY R. LEEMAN, PH.D., P.E. (“LEEMAN”)
2 seeks to remedy the continuing failure of defendants ABLE PLANET, INCORPORATED
3 (“ABLE PLANET”) and GROCERY OUTLET to warn individuals not covered by California’s
4 Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle
5 ABLE PLANET’s and GROCERY OUTLET’s products, about the risks of exposure to toxic
6 chemicals, present in and on consumer products manufactured, distributed, and offered for sale
7 or use throughout the State of California.

8 14. Defendants ABLE PLANET and GROCERY OUTLET manufacture, distribute,
9 import, sell, and offer for sale without warning in California, headphones with vinyl/PVC
10 components containing DEHP, including, but not limited to, the *Able Planet Linx Audio*
11 *Musicians’ Choice Foldable Active Noise Canceling Headphones, NC180BMT, UPC #8 16246*
12 *01472 1* (“HEADPHONE COMPONENTS”).

13 15. By this Complaint, Plaintiff JOHN MOORE (“MOORE”) seeks to remedy the
14 continuing failure of defendant TAP PLASTICS, INC., A CALIFORNIA CORPORATION
15 (“TAP PLASTICS”) to warn individuals not covered by California’s Occupational Safety
16 Health Act, Labor Code section 6300 et seq., who purchase, use or handle TAP PLASTICS’s
17 products, about the risks of exposure to toxic chemicals, present in and on consumer products
18 manufactured, distributed, and offered for sale or use throughout the State of California.

19 16. TAP PLASTICS manufactures, distributes, imports, sells, and offers for sale
20 without warning in California, vinyl/PVC tubing containing DEHP, including, but not limited
21 to, the *Tubing, 3-8 ID 1/2 OD, #46491* (“TUBING”).

22 17. TAP PLASTICS manufactures, distributes, imports, sells, and offers for sale
23 without warning in California, vinyl/PVC tool grips containing DEHP, including but not limited
24 to the grip component of the *Regal Brand 8” Long Nose Plier, Model No. LN-8, UPC #0 82021*
25 *39441 2* (“TOOL GRIPS”).

1 25. READY AMERICA manufactures, imports, distributes, sells, and/or offers the
2 GLOVES for sale or use in the State of California, or it implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the GLOVES for sale or use in the State of
4 California.

5 26. With respect to READY AMERICA, "PRODUCTS" are limited to the GLOVES.

6 27. ABLE PLANET manufactures, imports, distributes, sells, and/or offers the
7 HEADPHONE COMPONENTS for sale or use in the State of California, or it implies by its
8 conduct that it manufactures, imports, distributes, sells, and/or offers the HEADPHONE
9 COMPONENTS for sale or use in the State of California.

10 28. With respect to ABLE PLANET, "PRODUCTS" are limited to the HEADPHONE
11 COMPONENTS.

12 29. E.S.I. manufactures, imports, distributes, sells, and/or offers the HEADPHONE
13 CORDS for sale or use in the State of California, or it implies by its conduct that it manufactures,
14 imports, distributes, sells, and/or offers the HEADPHONE CORDS for sale or use in the State of
15 California.

16 30. With respect to E.S.I., "PRODUCTS" are limited to the HEADPHONE CORDS.

17 31. GROCERY OUTLET manufactures, imports, distributes, sells, and/or offers the
18 HEADPHONE COMPONENTS and the HEADPHONE CORDS for sale or use in the State of
19 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or
20 offers the HEADPHONE COMPONENTS and the HEADPHONE CORDS for sale or use in the
21 State of California.

22 32. With respect to GROCERY OUTLET, "PRODUCTS" are limited to the
23 HEADPHONE COMPONENTS and the HEADPHONE CORDS.

24 33. QUICK FITTING manufactures, imports, distributes, sells, and/or offers the
25 VALVE HANDLES for sale or use in the State of California, or it implies by its conduct that it
26 manufactures, imports, distributes, sells, and/or offers the VALVE HANDLES for sale or use in
27 the State of California.

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1 34. With respect to QUICK FITTING, “PRODUCTS” are limited to the VALVE
2 HANDLES.

3 35. TAP PLASTICS manufactures, imports, distributes, sells, and/or offers the
4 TUBING and the TOOL GRIPS for sale or use in the State of California, or it implies by its
5 conduct that it manufactures, imports, distributes, sells, and/or offers the TUBING and the
6 TOOL GRIPS for sale or use in the State of California.

7 36. With respect to TAP PLASTICS, “PRODUCTS” are limited to the TUBING and
8 the TOOL GRIPS.

9 37. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
10 person in the course of doing business within the meaning of Health and Safety Code sections
11 25249.6 and 25249.11.

12 38. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
13 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
14 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
15 California.

16 39. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
17 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
18 and 25249.11.

19 40. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
20 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
21 in the State of California.

22 41. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
23 the course of doing business within the meaning of Health and Safety Code sections 25249.6
24 and 25249.11.

25 42. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
26 State of California.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

3 48. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
4 Paragraphs 1 through 47 inclusive.

5 49. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

9 50. Proposition 65 states, “[n]o person in the course of doing business shall
10 knowingly and intentionally expose any individual to a chemical known to the state to cause
11 cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual” Health & Safety Code § 25249.6.

13 51. Each plaintiff’s allegations as to each defendant are limited to their respective
14 sixty-day notices, as specified in paragraphs 52 through 56.

15 52. On December 1, 2015, HELD sent a sixty-day notice of violation, together with
16 the requisite certificate of merit, to READY AMERICA and certain public enforcement
17 agencies stating that, as a result of READY AMERICA’s sales of the GLOVES containing
18 DINP, consumers and other individuals in the State of California were being exposed to DINP
19 resulting from their reasonably foreseeable use of the GLOVES, without the individual
20 purchasers and users first having received a “clear and reasonable warning” regarding such
21 toxic exposures, as required by Proposition 65.

22 53. On October 21, 2015, MOORE sent a sixty-day notice of violation, together with
23 a requisite certificate of merit, to TAP PLASTICS and certain public enforcement agencies
24 stating that, as a result of TAP PLASTICS’S sales of the TUBING containing DEHP, and the
25 TOOL GRIPS containing DEHP, consumers and other individuals in the State of California
26 were being exposed to DEHP resulting from their reasonably foreseeable use of the TUBING
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1 and the TOOL GRIPS, without the individual purchasers and users first having received a “clear
2 and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 54. On September 24, 2015, ENGLANDER sent a sixty-day notice of violation,
4 together with the requisite certificate of merit, to E.S.I., GROCERY OUTLET, and certain
5 public enforcement agencies stating that, as a result of E.S.I.’s and GROCERY OUTLET’s
6 sales of the HEADPHONE CORDS containing DEHP, consumers and other individuals in the
7 State of California were being exposed to DEHP resulting from their reasonably foreseeable use
8 of the HEADPHONE CORDS, without the individual purchasers and users first having received
9 a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

10 55. On August 20, 2015, LEEMAN sent a sixty-day notice of violation, together with
11 the requisite certificate of merit, to ABLE PLANET, GROCERY OUTLET, and certain public
12 enforcement agencies stating that, as a result of ABLE PLANET’s and GROCERY OUTLET’s
13 sales of the HEADPHONE COMPONENTS containing DEHP consumers, and other
14 individuals in the State of California were being exposed to DEHP resulting from their
15 reasonably foreseeable use of the HEADPHONE COMPONENTS, without the individual
16 purchasers and users first having received a “clear and reasonable warning” regarding such
17 toxic exposures, as required by Proposition 65.

18 56. On April 29, 2015, HELD sent a sixty-day notice of violation, together with the
19 requisite certificate of merit, to QUICK FITTING and certain public enforcement agencies
20 stating that, as a result of QUICK FITTING’S sales of the VALVE HANDLES containing
21 DEHP, consumers and other individuals in the State of California were being exposed to the
22 DEHP resulting from their reasonably foreseeable use of the VALVE HANDLES, without the
23 individual purchasers and users first having received a “clear and reasonable warning”
24 regarding such toxic exposures, as required by Proposition 65.

25 57. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
26 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
27 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
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1 plaintiffs' sixty-day notices of violation. As such, DEFENDANTS' violations are ongoing and
2 continuous in nature, and will continue to occur in the future.

3 58. After receiving plaintiffs' sixty-day notices of violation, the appropriate public
4 enforcement agencies have failed to commence and diligently prosecute a cause of action
5 against DEFENDANTS under Proposition 65.

6 59. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
7 or use in California by DEFENDANTS contain the respective LISTED CHEMICALS in such a
8 way that the reasonably foreseeable uses of DEFENDANTS' PRODUCTS result in exposures
9 that require a "clear and reasonable" warning under Proposition 65. DEFENDANTS'
10 respective violations of Proposition 65 are a result of their failure to provide warnings to
11 consumers exposed to DINP from the GLOVES and to DEHP from the HEADPHONE
12 COMPONENTS, HEADPHONE CORDS, VALVE HANDLES, TUBING and TOOL GRIPS
13 sold by DEFENDANTS in California.

14 60. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
16 CHEMICALS as alleged by plaintiffs in their respective 60-day notices of violation and this
17 Complaint.

18 61. As plaintiffs have alleged in their respective 60-day notices of violation, and in
19 this Complaint, the LISTED CHEMICALS are present in or on DEFENDANTS PRODUCTS in
20 such a way as to expose individuals through dermal contact and/or ingestion during and after
21 reasonably foreseeable use.

22 62. As plaintiffs have alleged in their respective 60-day notices of violation and this
23 Complaint, the normal and reasonably foreseeable uses of the PRODUCTS have caused, and
24 continue to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
25 defined by title 27 of the California Code of Regulations, section 25602(b).

26 63. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
27 of the PRODUCTS expose individuals to the LISTED CHEMICALS through dermal contact
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1 and/or ingestion as alleged by plaintiffs in their respective 60-day notices of violation and this
2 Complaint.

3 64. DEFENDANTS intend for such exposures to the respective LISTED
4 CHEMICALS from the reasonably foreseeable uses of the PRODUCTS to occur by their
5 deliberate, non-accidental participation in the manufacture, distribution, sale, and offering of the
6 PRODUCTS for sale or use to individuals in the State of California.

7 65. DEFENDANTS failed to provide a “clear and reasonable warning” to those
8 consumers and other individuals in California not covered by California’s Occupational Safety
9 Health Act, Labor Code section 6300 et seq. who have been or will be exposed to the LISTED
10 CHEMICALS.

11 66. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
12 directly by California voters, consumers, and other individuals exposed to the LISTED
13 CHEMICALS through dermal contact and/or ingestion, resulting from the reasonably
14 foreseeable uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable
15 warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain,
16 speedy, or adequate remedy at law.

17 67. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
18 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
19 for their respective violations

20 68. As a consequence of the above-described acts, Health and Safety Code
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

23 **PRAYER FOR RELIEF**

24 Wherefore, plaintiffs pray for judgment against DEFENDANTS as follows:

25 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
26 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
27 each violation;

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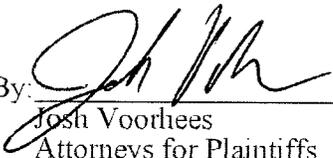
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICALS as alleged herein;

3. That the Court grant plaintiffs their reasonable attorneys’ fees and costs of suit; and

4. That the Court grant such other and further relief as may be just and proper.

Dated: February 16, 2016

Respectfully Submitted,
THE CHANLER GROUP

By: 

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